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Director

Department of Pesticide Regulation



Gray Davis
Governor
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Secretary, California
Environmental
Protection Agency

Final Regulation Change Pertaining to Permit Requirements

**Date
Established**

December 1, 2000

**Enforcement
Letter**

ENF 2000-047

Distribution

County Agricultural Commissioners

Referrals

If you have any questions pertaining to this document, please contact your Senior Pesticide Use Specialist liaison.

Approval

original signed by

David Duncan, Acting Chief
Pesticide Enforcement Branch
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Background

The Department of Pesticide Regulation amended Title 3 of the California Code of Regulations pertaining to restricted materials permits and pest control dealers to implement legislation and clarify terms and requirements.

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Final Regulation Change Pertaining to Permit Requirements, Continued

**Significant
Changes**

The most significant changes include:

- An exemption for certified private applicators to possess and use federally restricted use materials when operating under their license;
- Issuance of permits for up to three years for perennial agricultural plantings and non-production agriculture sites; and
- Restricted use material sales by pest control dealers to private applicator certificate holders upon proof of certification.

Attachment

A copy of the Final Text of the Regulation is attached for your information.

cc: Mr. Daniel J. Merkley, Agricultural Commissioner Liaison (w/Attachment)

FINAL TEXT OF REGULATIONS
TITLE 3. CALIFORNIA CODE OF REGULATIONS
Division 6. Pesticides and Pest Control Operations

Current wording is indicated by regular type.
Proposed deletions are indicated by ~~strikeout~~.
Proposed additions are indicated by underline.

Chapter 1. Pesticide Regulatory Program
Subchapter 1. Definition of Terms
Article 1. Definitions for Division 6

Amend/adopt the following definitions in section 6000 to read:

6000. Definitions.

....

~~"Authorized representative" means an employee of the person responsible for making decisions regarding the general operation of the property or a licensed agricultural pest control adviser who has written authorization from such person to act on his or her behalf.~~

....

"Certified private applicator" means a private applicator holding a valid private applicator certificate issued by the commissioner (or the director in any county where there is no commissioner) ~~valid restricted material permit~~.

....

"Course" means any course, class, or program offered by a provider of continuing education approved pursuant to section 6512.

....

"Operator of the property" means ~~the~~ a person who owns the property and/or is legally entitled to possess or use the property through terms of a lease, rental contract, trust, or other management arrangement ~~primarily responsible for the control or management of the property.~~

....

"Person" means any individual, partnership, association, corporation, business entity or organized group of persons whether incorporated or not.

....

"Private applicator" means:

- (a) an individual ~~person~~ who uses or supervises the use of a pesticide for the purpose of producing an agricultural commodity on property owned, leased, or rented by him ~~or~~ /her or his ~~or~~ /her employer; or
- (b) a householder who uses or supervises the use of a pesticide, outside the confines of a residential dwelling for the purpose of controlling ornamental, plant or turf pests on residential property owned, leased, or rented by that householder. ~~or~~
- ~~(c) a householder who uses or supervises the use of a restricted material not included in section 6400(a) (federally restricted) within the confines of a residential dwelling owned or rented by that householder.~~

....

NOTE: Authority cited: Sections 11456, 11502, 12111, 12781, 12976, 12981 and 14005, Food and Agricultural Code.

Reference: Sections 11401.2, 11408, 11410, 11501, 11701, 11702(b), 11704, 11708(a) 12042(f), 12103, 12971, 12972, 12973, 12980, 12981, 13145, 13146 and 14006, Food and Agricultural Code.

Chapter 2. Pesticides
Subchapter 4. Restricted Materials
Article 2. Possession and Use Limitations

Amend section 6414 to read:

6414. Permit Exemptions.

- (a) Permits to possess restricted materials shall not be required of pesticide registrants or pesticide control dealers when operating under their licenses, or by commercial carriers to transport such materials.
- (b) No permit shall be required for restricted materials included only in subsection(a) of section 6400 (federally restricted use) when possessed or used by or under the supervision of a certified private or certified commercial applicator unless otherwise required by the commissioner pursuant to section 14006.5 of the Food and Agricultural Code.
- (c) No permit shall be required for antifouling paints or paints containing tributyltin.
- (d) No permit shall be required for restricted materials used only for experimental or research purposes when possessed or used, by or under the supervision of, research personnel from colleges and universities provided they are operating according to the current established policy

of the college or university which covers experimental pesticide use ~~and experimentation~~.
(e) No permit shall be required for restricted materials used according to a valid research authorization issued pursuant to section 6260.

NOTE: Authority cited: Sections 11456, 12976, 14005 and 14102, Food and Agricultural Code.
Reference: Sections 11501, 14006 and 14006.6, Food and Agricultural Code.

Article 3. Permit System

Amend section 6420 to read:

6420. Qualified Permit Applicants Requirements.

(a) Permits for the agricultural use of a restricted pesticide material shall be issued only to in the name of the operator of the property to be treated, or when allowed by the commissioner, to the operator's authorized representative. The operator of the property shall be responsible for compliance with all permit conditions. Permits for other than agricultural use may be issued to the operator of the property to be treated or the pest control operator or both. No permit shall be valid for possession or use by any operator or person not named in the permit. The permittee or, when allowed by the commissioner, the permittee's authorized representative or licensed agricultural pest control adviser, shall sign the permit. The authorized representative or licensed agricultural pest control adviser shall provide the commissioner with written documentation from the permittee to act on his/her behalf.

(b) Permits for nonagricultural use of a restricted material may be issued in the name of the operator of the property to be treated or a pest control business. A permit issued to the operator of the property shall be signed by either the permittee or, when allowed by the commissioner, the permittee's authorized representative. The authorized representative shall provide the commissioner with written documentation from the permittee to act on his or her behalf. A permit issued to the pest control business shall be signed by the owner or a qualified applicator licensee or qualified applicator certificate holder responsible to supervise the operations of the pest control business.

(c) The permittee shall be responsible for compliance with all permit conditions.

NOTE: Authority cited: Sections 407, 11456, 14005 and 14102, Food and Agricultural Code.
Reference: Sections 11501 and 14006, Food and Agricultural Code.

Amend section 6422 to read:

6422. Permit Duration.

~~(a) A permit to use restricted materials shall be valid for the period specified unless sooner revoked or suspended, but in no case shall this period be more than twelve months. A copy of each permit shall be retained by the issuing officer or county for two years.~~

~~(b) Each permit issued for the agricultural use of a pesticide shall be site and time specific. Permits that are valid for a season or a year may be issued in order that advanced pest control~~

~~planning can be accomplished and shall be encouraged wherein appropriate and feasible. The absence of a permit valid for a season or a year shall not prohibit or restrict any applicant from applying for and obtaining a permit for a shorter duration.~~

(a) Each permit issued for agricultural use of a restricted material shall be site and time specific. Pursuant to Food and Agricultural Code section 14007, any permit may be issued for a one-year period. Permits issued for perennial agricultural plantings, nonproduction agricultural sites, or nonagricultural sites may be issued for up to a three-year period. Permit applicants may apply for and obtain a permit for a shorter duration.

(b) A permit to use restricted materials shall be valid for the time specified unless sooner revoked or suspended.

NOTE: Authority cited: Sections 407, 11456, 14005 and 14102, Food and Agricultural Code.
Reference: Sections 11501, ~~and~~ 14006 and 14007, Food and Agricultural Code.

Amend section 6428 to read:

6428. Agricultural Permit ~~Requirements~~ Applications.

Except as provided in section 6434(a), each application for a permit for ~~the~~ agricultural use of a ~~pesticide~~ restricted material shall include the following information:

(a) Name and business address of the ~~applicant~~ permittee and signature of either the permittee, or when allowed by the commissioner, the permittee's authorized representative or licensed agricultural pest control adviser;

(b) Location of each property to be treated;

(c) Identification of all known areas that could be adversely impacted by the use of the ~~pesticide(s)~~ restricted material(s) including, ~~but not limited to~~ hospitals; schools, and playgrounds; residential areas (including labor camps); parks; lakes, waterways, estuaries, and reservoirs; state wildlife management areas; critical habitats of rare, endangered or threatened species; and livestock and crops; (a map or aerial photograph may be used for designating such areas);

(d) Identification of each commodity or crop, or if there is no commodity or crop the site to be treated;

(e) Anticipated pest problem(s) for each crop (pest(s) to be controlled);

(f) ~~Pesticide(s)~~ Restricted material(s) requiring a permit necessary to control each pest on each commodity, crop, or site;

(g) Approximate date(s) or crop stage(s) of intended ~~pesticide~~ restricted material application(s);

(h) Expected method of application including the dilution, volume per acre or other units, and dosage;

(i) Name of the pest control ~~operator~~(s), business, if any, - and name, business address, and license or certificate number, with expiration date, of the certified private or certified commercial applicator responsible for supervising the possession or use of the restricted material(s).

NOTE: Authority cited: Sections 407, 11456, 14005 and 14102, Food and Agricultural Code.
Reference: Sections 11501 and 14006, Food and Agricultural Code.

Amend section 6430 to read:

6430. Nonagricultural Permit ~~Requirements~~ Applications.

Each application for a permit for ~~the~~ nonagricultural use of a ~~pesticide~~ restricted material shall include the following information:

- (a) Name and business address of the ~~applicant~~ operator of the property or the pest control business;
- (b) The signature of either the permittee, or the authorized representative, or the owner or qualified applicator licensee or qualified applicator certificate holder responsible to supervise the operations of the pest control business;
- (c) ~~(b)~~ Pesticide(s) Restricted material(s) to be used;
- (d) ~~(e)~~ Pest(s) to be controlled;
- (e) ~~(d)~~ Method of application; and
- (f) ~~(e)~~ Criteria for determining need for the pesticide application; and
- (g) Name, address and license or certificate number, with expiration date, of the certified applicator responsible for supervising the possession or use of the restricted material(s).

NOTE: Authority cited: Sections 407, 11456, 14005 and 14102, Food and Agricultural Code.
Reference: Sections 11501 and 14006, Food and Agricultural Code.

Amend Section 6442 to read:

6442. Permit Review.

Section 14009 of the Food and Agricultural Code provides for a ~~hearing before review~~ by the director, generally in accordance with the Administrative Procedure Act (Government Code Section 11500 et seq.) to review of the action of an agricultural commissioner in issuing, refusing, revoking, or suspending, or conditioning a restricted materials permit, ~~or in imposing any condition which is not expressly specified in the applicable regulations~~. This section states the standards and procedures applicable to such review by the director.

(a) Registration of a restricted ~~pesticide~~ material is not in itself a right to use the pesticide, but rather ~~registration~~ is a department determination that under appropriate local conditions the commissioner can grant a use permit for the material.

(b) The decision of ~~the~~ an agricultural commissioner in issuing, conditioning, refusing, revoking, or suspending a restricted materials permit will be reversed by the director only for a clear abuse of discretion by the commissioner in applying the applicable restricted materials provisions of the Food and Agricultural Code (beginning with section 14001) and regulations in Title 3, California Administrative Code of Regulations (beginning with section 6400). The burden of establishing the abuse of discretion is upon on the person requesting the review.

(c) The director's review is limited to the particular permit involved ~~and each person requesting the review must have a direct interest in the commissioner's action.~~

(d) The person requesting the review of the issuance of a permit may request that the director stay the ~~commissioner's action~~ operation of the permit for a limited time or until the matter is finally decided. Whether the stay will be granted or refused will be determined by the director as soon as practicable based on the reasons stated for the stay in the request for review and supporting documents, any counter documents or arguments which are timely filed submitted to the director by the commissioner or permittee, and the director's own preliminary analysis of whether a stay is necessary to avoid a significant health hazard or significant crop, environmental, or property damage.

NOTE: Authority cited: ~~Sections 407, 14005 and 14102~~ Section 11456, Food and Agricultural Code.

Reference: Section ~~11501, 14006 and 14011.5~~ 14009, Food and Agricultural Code.

Chapter 3. Pest Control Operations
Subchapter 1. Licensing
Article 6. ~~Pesticide~~ Pest Control Dealer Licenses

Amend section 6568 to read:

6568. Dealer Responsibilities.

(a) Each licensed ~~pesticide~~ control dealer that sells a restricted material which requires a permit for its use or possession shall, before sale or delivery, obtain a copy of the permit.

(b) A restricted material specified in ~~Section~~ Section 6400(a) (federally restricted use) or in ~~Section~~ Section 6400(d) (potential to pollute ground water) that does not require a permit for possession or use shall be sold or delivered only to a certified applicator. The dealer shall, before sale or delivery, obtain from the purchaser a copy of his or her qualified applicator license or certificate, private applicator certificate, or a signed statement in substantially the following form:

I am a certified applicator authorized by the scope of my _____

(license/certificate type)

license/certification No. _____ to use the restricted material(s) I am purchasing.

My license/certificate is valid until _____

(Date)

Name of operator of the property that I am employed by (if applicable): _____

(Certified Applicator)

(Date)

(c) Prior to the sale or delivery of pesticides listed in section 6622 to the operator of the property (or the operator's authorized representative), the dealer shall obtain from the purchaser a copy of the restricted materials permit showing all operator identification numbers, if the purchaser has such a permit; or a copy of the form issued to an operator of the property pursuant to section 6622.

(d) The dealer shall send a list of the operator identification numbers with corresponding names of persons purchasing pesticides during the quarter, within 10 days following the end of each quarter of the calendar year, to each of the commissioners who issued the numbers. The dealer is not required to send the list to the commissioner of the county in which the dealer is located.

(e) The dealer shall retain for two years a copy of each form specified in section 6622, permit, or signed statement that pesticide purchaser provided to the dealer. ~~These records shall be retained at the dealer's sales office and be made promptly available to the director or commissioner upon request.~~

NOTE: Authority cited: Section 11456 and 14005, Food and Agricultural Code.

Reference: Sections 11501, 14006, 14010 and 14035, Food and Agricultural Code.